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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/600,968	07/25/2000	MARCEL DERRIEN	IVD1025	4188

7590 11/04/2002

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EXAMINER

WONG, LESLIE A

ART UNIT	PAPER NUMBER
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1761

13

DATE MAILED: 11/04/2002

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No. 09/600,968	Applicant(s) Derrien et al.	
Examiner Leslie Wong	Art Unit 1761	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE three MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136 (a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on Oct 22, 2002.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11; 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1 and 14-35 is/are pending in the application.
- 4a) Of the above, claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1 and 14-35 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claims _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on _____ is: a) ☐ approved b) ☐ disapproved by the Examiner.
If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgement is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
a) ☐ All b) ☐ Some* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- *See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgement is made of a claim for domestic priority under 35 U.S.C. § 119(e).
a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgement is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- | | |
|---|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) Paper No(s). _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449) Paper No(s). _____ | 6) <input type="checkbox"/> Other: |

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A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on October 22, 2002 has been entered.

The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

Claims 1 and 14-35 are rejected under 35 U.S.C. 112, first paragraph, as containing subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention.

Applicant does not teach what is encompassed by "consisting essentially of" and how it applies to the claimed invention.

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

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Claims 1 and 14-35 are rejected under 35 U.S.C. 103(a) as being unpatentable over Nakagawa et al, Krotkiewski et al (EP 0291578), and Deveau et al for the reasons set forth in rejecting the claims in the previous Office actions (Paper Nos. 6 and 9). The amendments to the claims are not seen to influence the conclusion of unpatentability previously set forth.

Nakagawa et al disclose a salt substitute comprising sodium chloride, potassium chloride, magnesium, and calcium (see entire patent, especially the claims). Nakagawa et al also disclose the use of other additives such as magnesium phosphate, calcium phosphate, magnesium citrate, citric acid, and ascorbic acid (see columns 3 and 4).

Krotkiewski et al disclose a table salt comprising sodium chloride, potassium chloride, calcium, and magnesium (see entire document). Krotkiewski et al also disclose restricted consumption of salt for health reasons including hypertension (see column 1). It is also noted that the link between salt (sodium chloride) consumption and hypertension is notoriously well-known.

Deveau et al disclose a salt composition comprising sodium chloride and at least two salts from a group comprising magnesium chloride, calcium chloride, and potassium chloride (see abstract).

The claims differ as to the specific amounts claimed.

In the absence of a showing of unexpected results, the amounts claimed are merely a matter of choice and well-within the skill of the art. At most the amounts are seen merely as optimization, see *In re Boesch* 205 USPQ 215.

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Attention is invited to *In re Levin*, 84 USPQ 232 and the cases cited therein, which are considered in point in the fact situation of the instant case, and wherein the Court stated on page 234 as follows:

This court has taken the position that new recipes or formulas for cooking food which involve the addition or elimination of common ingredients, or for treating them in ways which differ from the former practice, do not amount to invention, merely because it is not disclosed that, in the constantly developing art of preparing food, no one else ever did the particular thing upon which the applicant asserts his right to a patent. In all such cases, there is nothing patentable unless the applicant by a proper showing further establishes a coaction or cooperative relationship between the selected ingredients which produces a new, unexpected, and useful function. *In re Benjamin D. White*, 17 C.C.P.A. (Patents) 956, 39 F.2d 974, 5 USPQ 267; *In re Mason et al.*, 33 C.C.P.A. (Patents) 1144, 156 F.2d 189, 70 USPQ 221.

It would have been obvious to a person of ordinary skill in the art, at the time the invention was made, to use the claimed amounts in any of *Nakagawa et al*, *Krotkiewski et al*, and *Deveau et al* because the use of the claimed components in the production of salt substitutes is taught by the prior art and the manipulation of the amounts does not provide unexpected results.

Applicant's arguments filed October 22, 2002 have been fully considered but they are not persuasive.

Applicant argues that the prior art does not teach partially replacing the sodium chloride content with calcium salts to obtain a composition having a substantially reduced sodium chloride content, and that the prior art includes additional components.

The prior art clearly teaches all of the claimed components in combination.

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Nakagawa et al disclose a salt substitute comprising sodium chloride, potassium chloride, magnesium, and calcium (see entire patent, especially the claims). Nakagawa et al also disclose the use of other additives such as magnesium phosphate, calcium phosphate, magnesium citrate, citric acid, and ascorbic acid (see columns 3 and 4).

Krotkiewski et al disclose a table salt comprising sodium chloride, potassium chloride, calcium, and magnesium (see entire document). Krotkiewski et al also disclose restricted consumption of salt for health reasons including hypertension (see column 1).

Deveau et al disclose a salt composition comprising sodium chloride and at least two salts from a group comprising magnesium chloride, calcium chloride, and potassium chloride (see abstract).

Applicant does not exclude additional components of the prior art and it is not seen where Applicant has provided support for unexpected results. In the absence of a showing of unexpected results, the amounts claimed are merely a matter of choice and well-within the skill of the art. At most the amounts are seen merely as optimization, see *In re Boesch* 205 USPQ 215.

In the absence of unexpected results, it is not seen how the claimed invention differs from the teachings of the prior art. Applicant's claims are drawn to a combination of known components which produces expected results, see *In re Kerkhoven* 205 USPQ 1069 and *In re Gershon* 152 USPQ 602.

All of the claim limitations and arguments have been considered. None of them are seen as serving as basis for patentability.

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No claim is allowed.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Leslie Wong whose telephone number is (703) 308-1979. The examiner can normally be reached on Tuesday-Friday.

The fax number for this Group is (703) 872-9310 for non-final responses and (703) 872-9311.

Any inquiry of a general nature or relating to the status of this application should be directed to the Group receptionist whose telephone number is (703) 308-0661.

A handwritten signature in black ink, reading "Leslie Wong". The signature is fluid and cursive, with the first letters of the first and last names being capitalized and prominent.

Leslie Wong
Primary Examiner
Art Unit 1761

LAW
November 4, 2002